

**Flood Authority Work Session  
Veterans Memorial Museum  
Chehalis, WA 98532**

**November 19, 2009 – 9:00 A.M.  
Meeting Notes**

**1. Convene Work Session**

Chairman Averill called the meeting to order at 9:15am.

**2. Introductions**

Board members and audience introduced themselves.

Chairman Averill stated the governor is moving Keith Phillips to another department and Antonio Ginatta will be doing the oversight for the Flood Authority.

Mr. Ginatta stated we are not losing Keith but he will be working on energy more closely. Mr. Ginatta has been working on homeland security and looks forward to working with the Flood Authority.

Mark White circulated an article on Katrina that was published in the NY Times.

Chairman Averill stated we would like to hold a work session in December. There are a number of items to work through before the regular meeting. Two of those we will discuss this morning. One is funding options for mitigation measures. The flood control districts in the RCW are relatively small and located within a county. We recognized we would need some changes in legislation and some of those changes have been made already. Mr. Mackey is looking at a flood control zone district which is a little different and he will introduce that to us. As we move toward whether we want to take a district to the voters, we want to make sure we have all the information there is to take to the voters.

Another issue is the GI basin wide problem. We have asked ESA to help us in that process, which means we need to change our agreement with ESA in terms of deliverables and cost changes.

In December Commissioners Willis and Averill met with Keith Phillips and Congressman Baird and the governor's office is interested in looking at a neutral agency, the Washington State Academy of Sciences. The intent is to have a neutral party look at the various proposals to see how they fit together. We are looking at this but we will look at it more concretely in December.

Mr. Mackey met with Dave Batker, Earth Economics, and the regulatory work group met on November 17 and finalized an agreement. There could be Phase II B funding and there was some discussion on a district formation. Also, the Governor's office, Flood Authority and Keith Phillips met to look at a joint proposal. There is pressure on the Twin Cities project moving forward and also the timing of proposed water retention projects. If things need to be adjusted, can they be adjusted in time? Perhaps a joint project proposal could be looked at by an independent group to see what the feasibility is and how it impacts those projects. That is in the formative stages. Mr. Mackey is working with Mr. Phillips and has contacted the Academy of Sciences. There will be more information in a week or so.

Commissioner Willis stated she sat in on the meetings. When talking with the Academy, she would like to know the different things they can look at. She asked if we can we get a detailed list of what they would have expertise in and what they can look at specifically.

### **3. Funding Options**

Mr. Mackey stated ESA Adolfson offered to look at funding options for districts in the future and Ann and Spencer drafted a new chapter in the plan. Ann will go through the options they looked at. Bruce will go through the work he has done comparing the zone and district, timing and costs and decisions that need to be made.

Ann Root presented a PowerPoint on the new chapter. She went through the background and why this chapter was prepared. Funding options include: a) Internal funding options, primarily for local jurisdictions; b) external funding sources; c) federal and state grants and loans; d) basin-wide options.

#### **a) Internal funding options:**

- Developer contributions (drainage dev fees; construction in lieu of fees)
- River Improvement Fund
- Drainage Districts
- Local Improvement Districts

There are levee and dike districts in some jurisdictions.

- Surface Water Utility (storm water utility is the same) most cities have these; not all counties have them.
- County Revenues (current expense fund, road fund, real estate excise tax, debt financing)

The Chapter has more details on how to use each of these.

A question was asked about the population threshold for runoff requirements. Ann stated she will check.

#### **b) External Funding Options Prevention**

- FEMA and grants/loans - require application process; some are competitive, some are not. Most require an approved comprehensive flood mitigation plan.

Commissioner Willis stated if we are writing something as a Flood Authority, she would like to get rid of the word "control" because no one controls floods. If someone else is attaching that word, leave it there, but if we are writing new language, she would like that word taken out. We mitigate for them; we clean up after them; we live with them; we do not control them so we should not imply that we can do that.

c) State Grants: Flood Control assistant account program (DOE); Centennial Clean water fund (DOE) and water pollution control revolving fund (DOE).

#### **External Funding Options Recovery:**

- Stafford Act (FEMA)
- Farm Program (USDA)

- Hazmat Mitigation grant program (Commerce)
- Public Works Trust Fund (Commerce)
- Emergency Relief Funds (WSDOT/FHA)

d) Basin-Wide Options Flood Control District:

Main options used on basin-wide basis: (the correct chapter is RCW 86.09, not 86.39)

- Established by voters within the district boundaries
- Governed by elected board of directors
- The purpose is investigation, planning, construction, improvement, replacement, repair or acquisition of a variety of funding options

Flood Control Zone District, RCW 86.15:

- Established by petition of 25% of voters or action of BOCC
- Governed by board of supervisors
- The purpose is to undertake, operate or maintain flood control or storm water control projects (the variety of funding mechanisms is found on pp 19-20)

Funding Source Evaluation

Evaluation Criteria:

Equity  
Stability  
Control  
Adequacy  
Relatedness  
Ease of implementation  
Restrictions  
Acceptability  
Legality  
Basin-wide applicability

Ms. Root showed the matrix of *Adequacy of Internal Funding Source and Various Uses* and the matrix of *Evaluation of Funding Mechanisms*.

Ms. Root asked for questions; there were none.

Mr. Mackey stated he had researched differences between flood districts and flood zone districts. He will leave a summary document that the members and audience can peruse. Mr. Mackey went to MRSC who had a table with the flood control district and the zone district side by side. It was a little outdated and there was some information missing, and he put background together if someone asks about specific legislation. Mr. Mackey found no flood control district in the state.

Mr. Mackey went through the outline.

An Interlocal agreement is a huge piece and either a zone or a district will require this document.

Chairman Averill stated this issue is why the legislation was submitted to the 2009 session. A district specifically requires that the voting be by property owners. If districts are small, it is not as difficult to

find out how much property someone owns for the votes they can have. When you have a three-county district and the population is large, that type of voting formula is too complex. The legislature did change that so that three or more counties can vote on it by registered voters within the boundaries.

Mr. Mackey stated the reason for multiple counties in the district was because the RCW mentions if there is a river and it is the boundary of two counties, you may want to include both of the entities along that river.

Chairman Averill stated when there are three counties the district requirement is for three commissioners maximum. We think it would be best to have 5 commissioners with a representative from each county; the largest two jurisdictions having two. Senator Swecker looked at that to include the Tribe. Another change was to accommodate the Association of Washington Cities insofar as they have someone on the board so their interests can be considered. Our thought was: three commissioners from unincorporated areas; two from incorporated areas. We would have to do the same type of thing if we decide on a zone to allow for a better form of equity in a large district with three or more counties.

We did not want the county commissioners to be on the flood district. We wanted a body with a full-time responsibility of running the district/zone.

Mr. Glenn Carter stated a concern was to make sure there is no liability as a district. He is concerned that the board is held responsible for flood control. A zone creates a separate entity that has separate commissioners that make their own decision, re: decisions for insurance, etc. If we go to a district, it is possible to achieve that if you have elected supervisors.

Mr. Mackey stated both are public corporations and you can have an individual entity and you can have elected supervisors to run the boards in both the District and the Zone.

If a county has a Boundary Review Board (BRB), forming the district must go through the BRB. That could affect the timing. Mr. Mackey referred to handout: Flood District Formation. Two counties have set up flood control zone districts. He also talked to someone who put together a King County flood control zone district. Advice from all, as seen on page 2, is you need professional help regarding finances, legal advice, and economic issues. They suggested an advisory committee and that committee should participate in the formation of the district and continue after the formation. The formation is a one or two year process and you need an interlocal agreement. They all suggested an economic analysis looking at direct and indirect benefits. A zone requires the political support to show the benefits. This is important for rates and charges. Depending on how you want to go, rates require a tremendous amount of analysis and it has to be done to set up a district. If you add up those figures it will take up to \$1million and up to two years. That is why the \$1million was added to the budget.

Chairman Averill stated once formed, the district is out there until it's decided by authorities that it should no longer exist. It may be formed to do a particular project but what if another project is needed? We knew we would need to identify projects for voters, but he did not think we had to constrain the district to do those projects presented to the voters originally, and only those projects.

Mr. Mackey stated a district cannot be formed unless you identify projects.

Commissioner Valenzuela agreed that the zone district would be easier and cheaper.

Commissioner Willis stated for the zone we were given the option to have elected supervisors if we choose. Can we also put in other parameters, such as voting the zone in or out? According to this the commissioners can form the zone without a vote. Instead of the commissioners putting it in, could the constituents vote it in?

Mr. Mackey stated it can be initiated by the legislative body or 25% of the voters by petition, but that would put it back to the commissioners. The petition says the BOCC now has to consider it.

Commissioner Averill stated a public advisory vote can be used; it is not that the BOCC gave up the option to make the decision

Mr. Mackey stated he is trying to bring the issues to wrestle with for a flood district. What we could do is go back to one of these professional people and ask them to address the Flood Authority or get a legal analysis from someone who deals with it. He is trying to bring it forward now because we have put a request in to the governor's office for money in the supplemental budget. The original bill was an appropriations bill and this request will need to be re-appropriated funds. Mr. Mackey is looking at the timing issue. If you decide which way you want to go by January or February, or when the budget comes out, and you know you have gotten the supplemental budget, there is timing there to put together the organization you will need and you can use the money in the supplemental budget.

Commissioner Averill stated each county has an attorney. Why couldn't we use in-house expertise?

Mr. Carter stated if there are lawyers out there who have worked on these districts, you should hire those people because they have the expertise.

Mr. Mackey stated the state is funding this and he does not know if there is a link to use the Attorney General's office; there might be.

Chairman Averill stated this information has been very useful and we need some time to study it. His concerns are that it was purposeful in the minds of the counties and the Tribe, that we wanted the body to have its own officers and that the county commissioners would not be the managers or the board. The larger the board, the more difficult it is to make decisions.

Mr. Mackey asked how successful would it be to form a district to get voter support. If you did not get voter support then forming a zone is not an option.

Commissioner Valenzuela would like to have Senator Swecker continue working on the bill.

Chairman Averill stated Senator Swecker knows this is out there. We need to make a decision whether or not he should resubmit the bill.

Mr. Mackey stated there are some critical questions you can ask. If you want to pursue a zone, you need to answer the questions about future projects.

Chairman Averill stated the law puts the formation of a district or zone in the hands of the County Commissioners. While three of us represent the commission, we do not represent the whole body. The new legislation was made by all the commissioners and the Tribe. If we are going to change that we need another joint meeting to discuss this so a decision can be made.

Commissioner Willis stated the governance needs to be nailed down. Language is changing and it needs to be very clear. The people who are responsible should not be connected to the county.

Mr. White stated you want to build the district but make sure nothing can touch the county assets if something goes wrong. As a citizen, that bothers him. If you are not afraid of building this, why wouldn't you take responsibility?

Chairman Averill stated from a legal standpoint, the state and feds are immune from being sued but the cities and counties are not. The idea is that we set this up in a separate municipal corporation that would need to be adequately insured so if something goes wrong, we can cut the cord at the entity rather than going for the deeper pockets. We want to provide ourselves some protection from those suits.

Mr. Carter stated on this kind of a liability, it is hundreds of millions of dollars and the county may need to cut other services.

Commissioner Willis stated we commissioners do not have time to put in the time for this district. If we are not making those decisions, she wants to make sure there is a distance between the county and those who make the decisions. All decisions need to be given to the voters. She does not want someone making decisions for the county over which she has no control. Once the district is formed, then the Flood Authority no longer exists.

Chairman Averill stated if we went with the zone, we could form it or get a petition of 25% of the voters; that would be the cover for forming the zone.

Mr. White stated we need to stand behind it.

Mr. Mackey stated you need to have a public process and an economic analysis to show people how it is going to work.

Mr. White stated we need someone to talk to us who knows it inside and out.

Mr. Mackey stated maybe someone could talk about their experience. Out of that if you decide there are specific questions, we could ask for specific legal advice. For example, if you are thinking about a district, do all these projects have to be considered ahead of time?

Commissioner Willis stated a district could be just two projects: the dike and the retention dam.

Mr. Mackey stated you would also want an organization to help mitigate flooding and not just associated with the two projects. You could give that to the lawyers.

Commissioner Valenzuela would like a conversation with those two experts. Perhaps Mr. Mackey can get them to volunteer their time to come.

Chairman Averill asked if we can put that on the December or January agenda. This is a short legislative session. He will talk to Senator Swecker. Commissioner Valenzuela suggested perhaps Senator Swecker could come to the work session.

#### **4. Break**

The meeting recessed at 10:54, reconvening at 11:10.

#### **5. Proposed General Investigation Budget Amendment**

Chairman Averill stated the Flood Authority needs to incorporate the new GI Project Management Plan amendment which is outside of the contract with ESA. Mr. Mackey has done work on what the Flood Authority needs for support from ESA and the funding that would be required.

Mr. Mackey stated ESA has tried to be flexible. They have added a chapter in governance and finance and participated in the open houses. He is concerned that he is being asked to do things that he cannot do with the current budget. ESA has taken an active role in the GI study. He looked at the number of meetings as well as the time spent for each meeting and there are other groups to include. He has put in time for technical support (Dave Carlton) and anyone else the Flood Authority may need. The budget comes in at about \$79,000.

Chairman Averill stated it would be helpful to cover what ESA contracted for this year.

Mr. Easton stated it is just under \$400,000 for this year. Deliverables include: facilitate work sessions, BAC meetings and business meetings; work on the flood plan; public meetings on the plan; ripe and ready projects coordination; and Dave and Linda as sub-consultants.

Mr. Schillinger stated he has no hesitation in saying the task that we have is huge and it is not a short term project. Until the district is formed, the Flood Authority is trying to wade through everything. The GI study is very important and without ESA's presence and guidance we'd be back at square one. He appreciates the expertise and facilitation expertise ESA has brought to the table and believes the Flood Authority should come up with the money.

Mr. White asked if we are going to pay someone to go to the meetings, will that eliminate the BAC. How many people do we need on the GI?

Chairman Averill stated anyone can come to the meetings; someone has to do the work; write the reports, do the research, etc.

Commissioner Willis stated there is an element of fiscal responsibility for our staff. The funding is coming out of the Flood Authority appropriation, not the Chehalis Basin Partnership.

Chairman Averill asked if there is another adjustment to make beyond this.

Mr. Mackey stated the one he sees coming is the joint study. The timing is further out and if we get money from the supplemental budget we could use some of that. Hopefully we are budgeting for that work program.

Chairman Averill stated this item will be introduced to the Flood Authority members this afternoon and then we can start preparing the documents that must be approved by the Flood Authority and the LC BOCC to pass in December. The support we get from ESA in research and documentation is very important to the Flood Authority. When we originally developed the budget we did not include the scope of work done by ESA for the public sessions - both preparation and material and spending time at the meetings. It is money well spent. We need to supplement the original appropriation for ESA's continued support.

## **6 . Adjourn**

As there was no other business, the meeting adjourned at 11:27 A.M.